REMARKS

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I. Preliminary Remarks

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The Claims were subject to a Restriction Requirement, mailed March 9, 2006. Applicant chose Group I, Claims 1-11, 20-31 and 76-83, drawn to an immunogenic/vaccine composition, and elected the species of *Leptospira borgpetersenii hardjo-bovis*.

After entry of this paper, Claims 3 and 22 are original. Claims 1-2, 4-5, 7-11, 20-21, 23, 25-31, 76-77, and 79-82 are amended. Claims 6, 12-19, 24, 26, 32-75, 78, and 83 are withdrawn, with claims 6, 12, 18, 24, 26, 54, 70-72, 78, and 83 being withdrawn and amended. Withdrawn claims are withdrawn without prejudice in an effort to favorably advance prosecution of the present application. Applicant reserves the right to pursue the subject matter of the withdrawn claims in a continuation application, or to have the withdrawn claims rejoined in the current application. Support for the amendments to the claims is found throughout the specification. The amendments do not include new matter. Reconsideration and withdrawal of the rejections are solicited for the reasons set out below.

In this response, Applicant addresses each of the rejections raised by the Examiner. Applicant therefore respectfully submits that the present application is in condition for allowance. Favorable consideration of all pending claims is respectfully requested.

This Response is timely filed. The USPTO is given authorization to charge Deposit Account No. 16-1445 for any fees necessary with the submission of this Response.

II. Patentability Arguments

A. The anticipation rejection of Claims 1-2, 7, 20-21, 76, and newly amended claims 8-11, 28-31, and 80-82 under 35 U.S.C. §102(b) may properly be withdrawn.

A patent is invalid for anticipation under 35 USC 102(b) if a <u>single</u> prior art reference identically discloses each and every limitation of the invention as set forth in the claims. (Lewmar Marine, Inc. v. Barient, Inc., 827 F.2d 744, 747 (Fed. Cir. 1987)). The prior publication must disclose in an <u>enabling</u> manner the invention that is in question. The exclusion of a claimed element, no matter how insubstantial or obvious, from a reference is enough to negate anticipation. (Connell v. Sears, Roebuck & Co., 220 U.S.P.Q. 193, 1098 (Fed. Cir. 1983)). Applicant respectfully submits that these criteria are not met in the Examiner's rejection. The claims, therefore, are not anticipated by the references.

The Examiner has maintained the rejection of claims 1-2, 7, 20-21, 27, 76 and newly amended claims 8-11, 28-31, and 80-82 under 35 U.S.C. 102(b) as being anticipated by Bowland, et al., of record (Canadian Veterinary Journal, Jan 2000, Vol. 41, No. 1, pages 33-48). The Examiner has disagreed with our contention in the response to the Office Action of May 1, 2006 that Bowland, et al., do not teach the antigen composition of the present invention comprising two different inactivated BVDV antigens, namely BVDV Type 1 and BVDV Type 2. The Examiner stated that "The commercial vaccine BoviShield™3 referenced in Table 1 (page 35) contains BVDV Type 1 and BVDV Type 2. Therefore Bowland does teach the instant claimed invention." We respectfully disagree with the conclusion reached by the Examiner as far as the antigen composition of the commercial vaccine BoviShield™3.

As stated above, a rejection of a claim for anticipation requires that the single cited reference disclose each and every element of the claim in an enabling manner. Bowland, et al., do not anticipate the claimed invention because they fail to disclose each and every element of the claim in an enabling manner. Bowland, et al., do not enable an immunogenic composition or a vaccine composition comprising two different strains (Types 1 and 2) of BVD virus. They merely reference BoviShield^{TM3} and indicate that it contains IBRV, PI3 and BVDV. Bowland, et al., do not teach that BoviShieldTM3 contains both BVDV Types 1 and 2. As indicated by the sub-heading within Table 1 of Bowland, et al., (Line 21, Page 35) BoviShieldTM3 is categorized as a 3-Way MLV vaccine, thus containing 3 viral antigens. The Examiner would need to look to another reference to determine whether both Types are included in BoviShieldTM3. However, this is not the standard for an anticipation rejection. Details about the antigenic composition of BoviShield^{TM3} can be found on page 1145 of Compendium of Veterinary Products, Eighth Edition published January 2005 (ISBN 1-889750-81-6 and Library of Congress Card Number: 97-643262 - See attached). According to this description, "BoviShield^{TM3} is a freeze-dried preparation of modified live virus (MLV) strains of IBR, BVD, and PI₃ viruses, plus a sterile diluent used to rehydrate the freeze-dried vaccine." Even this reference does not state whether the preparation contains Type 1, Type 2, or both. Also the viral antigens contained in BoviShield™3 are only IBRV, PI3 and BVDV. It does not contain all of the viral antigens contained in the compositions of

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the present invention, which include BHV-1, Pl3, BRSV, BVDV-1, and BVDV-2 (see Claims 1, 20, and 76 of the instant invention).

Also indicated by the sub-heading within Table 1 of Bowland, et al., (Line 21, Page 35) BoviShield™3 is categorized as a 3-Way MLV vaccine, The term MLV stands for "Modified Live Virus" as opposed to inactivated virus. While BoviShield^{TM3} is a composition containing a modified live BVD viral antigen, Claims 2, 21, 80, and 82 of the instant invention are drawn to antigen compositions comprising two different inactivated strains (Types 1 and 2) of BVD virus. Thus, Bowland, et al., do not anticipate these claims of the instant invention.

Thus, Bowland, et al., do not teach each and every limitation of Claims 1, 20, or 76 of the instant application. The other rejected claims either depend from one of these independent claims or from a claim that depends from them. These dependent claims further delineate the independent claims; they embody all the elements of them. Accordingly, the subject matter of the dependent claims is not anticipated by Bowland.

Thus, based on the remarks presented herein, the rejection of Claims claims 1-2, 7, 20-21, 27, 76 and newly amended Claims 8-11, 28-31, and 80-82 under 35 U.S.C. 102(b) is overcome. Withdrawal of the rejection is therefore respectfully requested.

C. The Obviousness Rejection of Claims 1-7, 20-27, 76-79 83 under 35 U.S.C. §103(a) May Be Properly Withdrawn.

As stated in the MPEP (§2141), to support an obviousness rejection, four basic criteria must be met. These are (A) The claimed invention must be considered as a whole; (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination; (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and (D) Reasonable expectation of success is the standard with which obviousness is determined. Clearly for prior art to render an invention obvious, it must render obvious the whole invention and not merely some part of the invention (In re Antonie 559 F.2d 618, 620, 195 USPQ 6,8 (CCPA 1997)). The prior art must also be considered as a whole including parts that teach away from Applicant's invention. Applicant respectfully submits that these criteria are not met in the Examiner's rejections.

The Examiner has maintained that Claims 1-7, 20-27, 76-79, 83 and newly amended claims 8-11, 28-31 and 80-82 are unpatentable over Talens, et al., (Journal of the American Veterinary Medical Association, May 1, 1989, Vol. 194, No. 9, pages 1273-1280) or Bowland, et al., as originally applied to claims 1-2, 7, 20, 21, 27 and 76, and further in view of Barr, et al., (Advanced Drug Delivery Reviews, 1998, Vol. 32, No. 3, pages 247-271), Pruett, et al., (Veterinary Parasitology, 1995, Vol. 58, No. 1-2, pages 143-153), and Wilson, et al., (Canadian Journal of Veterinary Research, Oct 1995, Vol. 59, No. 4, pages 299-305). Applicants respectfully traverse this rejection.

The compositions of the present invention comprise a group of antigens and a chemically well-defined adjuvant component. The antigens of the present invention are three different modified live viruses, namely Bovine Herpes Virus (BHV), Bovine Respiratory Syncytial virus (BRSV), and parainfluenza virus 3 (PI3) and two different stains of BVD virus. The adjuvant composition is made up of Amphigen, an oil-in-water emulsion, and Quil A, a triterpenoid.

The Examiner stated that Talens, et al., and Bowland, et al., teach the antigen composition of the present invention, and that the adjuvant composition of the present invention can be learned from Barr, et al., Pruett, et al., and Wilson, et al. As explained in our response dated July 14, 2006 to the Office Action dated May 1, 2006, as well as in this present response, neither Talens, et al., nor Bowland, et al., teaches the antigen compositions of the present invention. The antigen composition claimed in the present invention is a mixture of two BVD viral antigens whereas both references cited by the Examiner contain only one strain of BVD viral antigen or do not specify the type of BVD viral antigen. See discussion above.

The Examiner has cited Barr et al., Pruett et al., and Wilson, et al., as prior art references teaching the adjuvant composition of the present invention. According to the examiner, a person skilled in the art could use the teachings about adjuvant compositions in one of these three references and with the teachings of either Talens, et al., or Bowland, et al., reach the vaccine compositions of the present invention. We respectfully disagree with the contention of the examiner.

As established in our response to the Office Action of May 1, 2006, as well as in this response, neither Talens, et al., nor Bowland, et al., teaches the antigen compositions claimed in the present application. Even if we assume that either one of these cited references does teach the antigen composition of the present invention, it can not be concluded that a person skilled in the art could combine their teachings with the teachings about adjuvants in the other three references to reach a vaccine composition of the present invention because neither Barr et al., Pruett et al., nor Wilson, et al., teach nor suggest the adjuvant compositions of the present invention.

The present invention claims an adjuvant composition comprising an oil-in-water emulsion (such as Amphigen) and Quil A (a saponin). Barr, et al., teaches in general about the chemistry and the mode of action of saponin adjuvants. This reference also teaches the preparation and use of immunostimulatory complexes (ISCOM) based on saponin adjuvant. While it teaches the use of Quil A in combination with liposomes, microspheres, and aluminum salts, there is neither a teaching nor a suggestion for combining Quil A with an oilin-water emulsion such as Amphigen.

Pruett, et al., teach a combination of Amphigen and alhydrogel as an adjuvant in a vaccine formulation comprising hypodermin A protein as an antigen. There is no teaching in this reference for combining Quil A with Amphigen. Moreover, this reference focused on showing a synergy in the antibody response due to this Amphigen-Alhydrogel combination. A person skilled in making viral vaccines would have paid attention towards selecting an adjuvant combination based on the synergy in terms of cellular immune response, as the cellular immune response is more important in offering protective immune response due to vaccination. Pruett, et al., suggest the mixture of alhydrogel and amphigen to be worthy of further efficacy investigation in a vaccine formulation only with hypodermin A. There is nothing in Pruett to suggest that the adjuvants used in the cattle grub hypodermin A homogenate vaccine could be used successfully in the compositions of the present invention. Thus a person skilled in the art would not have combined the teachings of Pruett, et al., to prepare a vaccine of present invention.

Wilson, et al., teach the use of a variety of adjuvants in testing the subunit vaccines prepared from extracts of Actinobacillus pleuropnemoniae. Included in the list of adjuvants

tested in this study are Amphigen and Quil A. However, in this reference there was no suggestion to combine Amphigen with Quil A. In one of the animal trials in this study (Trial III, Page 303) Amphigen was used either alone or in combination with vitamin E. As the results shown in the Table III on page 303 indicates, combining Vitamin E with Amphigen significantly reduced the adjuvanticity of Amphigen. With the addition of Vitamin E to Amphigen, the protective immune response, measured in terms of antibody titer, decreased while the mortality rate increased. At the same time addition of Vitamin E to Canola improved the protective immune response. Thus a person skilled in the art, upon seeing the results of Wilson, et al., would be resistant to combine any other adjuvant component with Amphigen in a vaccine formulation.

The MPEP (2143.01) teaches that the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. (Also see In re Fritch (CAFC 1992) 972 F2d 1260, 23 PQ2d 1780 and Monarch Knitting Mach. Corp. v. Sulzer Morat GmbH (CAFC 1989), 139 F3d 877, 45 PQ2d 1977.) However, there is no such suggestion in the references of the desirability of combining the references.

Claims 6, 24, 26, and 78 have been withdrawn, rendering this rejection moot.

The Applicant respectfully submits that none of the references cited by the Examiner suggest Applicant's invention. There is no indication in any of the references that would suggest that the references be combined. Moreover, even when combined the references do not yield Applicant's invention. Accordingly, it is respectfully submitted that the immunogenic compositions and vaccine compositions, as presently claimed, are not rendered obvious by Talens, et al., or Bowland, et al., in view of Barr, et al., Pruett, et al., and Wilson, et al. Thus, based on the remarks presented herein, the rejection of Claims 1-7, 20-27, 76-79, 83 and newly amended claims 8-11, 28-31 and 80-82 under 35 U.S.C. §103(a) is overcome. Withdrawal of the rejection is respectfully requested.

Date: March 21, 2007

Patent Appl. No. 10/647,919 Docket No. 15634 (PC25246) Filing Date: August 26, 2003

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III. Conclusion.

In view of the amendments and remarks made herein, Applicants respectfully submit that Claims 1-5, 7-11, 20-23, 25-31, 76-77, and 79-82 are in condition for allowance and request expedited notification of same.

Respectfully submitted,

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Compendium of Veterinary Products

Eighth Edition

Published January 2005

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Distributed by

North American Compendiums, Inc. 942 Military Street Port Huron, MI 48060

ISBN 1-889750-81-6

Library of Congress Card Number: 97-843262

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